



Judy Sello
Senior Attorney

Room 3A229
One AT&T Way
Bedminster, NJ 07921
Tel.: 908-532-1846
Fax: 908-532-1218
Email: jsello@att.com

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Ex Parte

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW, Room TWB-204
Washington, DC 20554

Re: *In the Matter of Regulation of Prepaid Calling Card Services*
WC Docket No. 05-68

Dear Ms. Dortch:

This letter is to inform the Commission that yesterday Amy Alvarez and I of AT&T Corp. ("AT&T"), along with David Lawson of Sidley Austin Brown & Wood LLP, had a telephone conversation with Michelle Carey of the Wireline Competition Bureau. We discussed AT&T's Emergency Petition for Immediate Interim Relief filed May 3, 2005 ("Petition"), and AT&T's specific proposal for a certification process in its *ex parte* letter filed July 15, 2005. In our conversation, we discussed the following specific points.

The Commission should take immediate action to subject all prepaid card providers, on a going forward basis, to the same universal service and access charge regulations. With regard to access charges, the Commission should rule that regardless of regulatory classification, the ESP exemption shall no longer apply to prepaid card services or provide any basis for the nonpayment of access charges for the origination or termination of prepaid card calls. At the interstate level – *i.e.*, where the calling and called party are located in different states – such a ruling would make indisputably clear that interstate access charges apply to prepaid card calls on a going forward basis, regardless whether the prepaid card service in question is an information service or a telecommunications service. As a practical matter, such a ruling would also result in the payment of intrastate access charges on intrastate prepaid card calls. In this regard, it is the Commission's ESP exemption that has allowed providers that view their services as information services to not pay access charges on intrastate calls. This is because the states generally have no formal rules or policies establishing a similar access charge exemption under state law, and enhanced service

providers typically invoke the federal exemption. For these reasons, the practical effect of repealing the ESP exemption will almost certainly be that prepaid card providers pay either interstate or intrastate access charges for all calls.

Classifying all prepaid card services as telecommunications services holds no advantage over simply repealing the ESP exemption. Even if the Commission classified all prepaid card services as telecommunications services, such a ruling would not necessarily mean that intrastate access charges would apply for calls originating and terminating within a single state. Under Section 2(b) of the Act, 47 U.S.C. § 152(b), the states would retain exclusive authority to determine the rates for access services whether the purchaser is a telecommunications carrier or an information service provider. Thus, classifying all prepaid card services as telecommunications services could not provide any greater assurance that providers would owe intrastate access charges than the option of repealing the ESP exemption. In either case, a state could take affirmative action to exempt prepaid card calls from intrastate access charges. The only way the Commission could dictate the outcome for all calls would be to find all prepaid card traffic to be within the FCC's interstate regulatory jurisdiction and to affirmatively pre-empt contrary state action.

Classifying all prepaid card services as telecommunications services, however, rather than simply repealing the ESP exemption, would have a number of unintended adverse effects. Pursuant to the Commission's policies providing for detariffing of telecommunications services and a deregulatory approach to information services, prepaid card providers today operate in a generally unregulated environment that is conducive to competition and minimizes industry costs. If the Commission were to issue a formal ruling that all prepaid card services are telecommunications services, however, many providers that have been operating on the assumption that their services were information services suddenly could be subject to a wide array of regulatory requirements at the state level, including a requirement to file tariffs for prepaid card services in many states. The imposition of such requirements on prepaid card services would be entirely unwarranted and a substantial step backward. Compliance with such requirements would also substantially raise the cost of providing prepaid card services for the entire industry, to the detriment of consumers.

For all of these reasons, the Commission should merely repeal the ESP exemption for prepaid card services on a going forward basis, which would as a practical matter result in all prepaid card providers paying access charges regardless of classification. The Commission need not and should not reach the question whether today's prepaid card services are telecommunications services or information services.

One electronic copy of this Notice is being submitted in accordance with the Commission's rules.

Sincerely,

/s/

Judy Sello

Cc: Michelle Carey
Tom Navin
Tamara Preiss
Steve Morris
Lynne Hewitt Engledow